



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2012

Ms. Susan V. Case  
Administrative Assistant  
Gainesville Police Department  
201 Sante Fe Street  
Gainesville, Texas 76240-2255

OR2012-01046

Dear Ms. Case:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 442887.

The Gainesville Police Department (the "department") received a request for all documents pertaining to the department's investigation of a specified fatality automobile accident. You state you will release some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body

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<sup>1</sup>Although your brief does not specifically raise section 552.130, we understand you to raise this exception based on your markings in the submitted information.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(1)(D). We understand the department has redacted, in part, some information subject to 552.130(a)(1) pursuant to section 552.130(c) of the Government Code.<sup>3</sup> We also understand the department has redacted Texas license plate numbers pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009), which authorizes the withholding of ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, you do not assert, nor does our review of our records indicate, that the department is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the department should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Exhibit C relates to an pending criminal case and release of the information would interfere with the detection, investigation, and prosecution of a crime. Based on your representations and our review, we find that release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold Exhibit C under section 552.108(a)(1).

Next, we note the remaining information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c) or

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<sup>3</sup>On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with at least two of the specified items of information. Accordingly, the department must release the submitted CR-3 accident report form, which we have marked, to this requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). You seek to withhold information within the CR-3 accident report form under section 552.130. A statutory right of access generally prevails over the Act's exceptions to public disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 3 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 550.065 of the Transportation Code and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451. In this instance, section 550.065 specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold any portion of the CR-3 accident report form under section 552.130 and must release the CR-3 accident report in its entirety under section 550.065(c)(4).

You also raise section 552.130 for some of the remaining information. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.);

*see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). The remaining information includes motor vehicle record information of a vehicle belonging to a deceased individual. If a living person owns an interest in the deceased individual's vehicle, the department must withhold the motor vehicle record information pertaining to that vehicle, which we have marked, under section 552.130 of the Government Code. If no living person owns an interest in the vehicle at issue, the department may not withhold the marked motor vehicle record information pertaining to that vehicle under section 552.130. The remaining information we have marked consists of motor vehicle record information relating to living individuals, which the department must withhold under section 552.130.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>4</sup> Gov't Code § 552.101. This section encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990). In addition, a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department may withhold Exhibit C under section 552.108(a)(1). The department must release the submitted CR-3 accident report form we have marked to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. If a living person owns an interest in the deceased individual's vehicle, the department must withhold the motor vehicle record information we have marked pertaining to that vehicle under section 552.130 of the Government Code. The department must withhold the motor vehicle record information we have marked relating to living individuals under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a stylized flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/ag

Ref: ID# 442887

Enc. Submitted documents

c: Requestor  
(w/o enclosures)